

DELTA CHEMICAL CO.

IBLA 83-194

Decided September 21, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for a sodium prospecting permit, CA 6245.

Affirmed.

1. Administrative Procedure: Generally -- Mineral Leasing Act:
Generally -- Sodium Leases and Permits: Permits

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

APPEARANCES: Robert J. Simpson, Esq., San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On May 24, 1979, Delta Chemical Company (Delta) filed an application for a prospecting permit with the California State Office, Bureau of Land Management (BLM). The application named sodium chloride and calcium chloride as the minerals for which the permit was sought. Subsequently, on June 12, 1979, Delta amended its application to substitute sodium as the mineral for which it was applying.

By decision of October 29, 1980, BLM rejected the application in its entirety, explaining that the lands sought for permit were subject only to competitive leasing. BLM based its decision upon a report by the Geological Survey (Survey), subsequently designated to be the Minerals Management Service (MMS), 1/ which stated that the lands involved are overlain by deposits

1/ By Secretarial Order No. 3071, published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the MMS to, inter alia, assume the functions of the Conservation Division, Survey. On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions of the MMS, not relating to royalty management, to BLM. Notice of the transfer of functions was published in the Federal Register on Mar. 2, 1983. 48 FR 8982.

of crystalline salt and brines dominated by sodium compounds. Based upon this information, BLM invoked the provisions of 30 U.S.C. §§ 261-263 (1976), which require that lands known to contain valuable deposits of a leasable substance be competitively leased. Delta appealed the BLM decision.

By order dated April 10, 1981, this Board vacated the October 29, 1980, BLM decision and remanded the matter for redetermination because the record did not disclose whether BLM had sufficient data to reject Delta's application for a prospecting permit. In the order we stated as follows:

An application for a sodium prospecting permit is properly rejected when the lands involved are known to contain valuable deposits of a leasable substance. 30 U.S.C. § 262 (1976). The meaning of the statutory phrase "known to contain valuable deposits [of a leasable substance]" can be understood from decisions of the Supreme Court defining the phrase "known to be valuable [for a leasable substance]." Charles W. Hicks, A-27130 (June 6, 1955); C. A. Romano, A-27003 (December 3, 1954).

Actual discovery of sodium mineral deposits on the land sought is not required in order that the land may be regarded as "known to contain valuable deposits" of the mineral. Competent evidence may consist of proof of the existence of the mineral on adjacent lands as well as proof of geological and other surrounding and external conditions, and all that is required is that the evidence show that the known conditions were plainly such as reasonably to engender the belief that the lands contain the mineral in such quantity and of such quality as to render its extraction profitable and justify expenditures to that end. United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914); United States v. U.S. Borax Co., 58 I.D. 426, 433 (1943).

In light of appellant's contention that the sodium salt overlay is worthless, additional information is sought from BLM and Survey as to whether known conditions were plainly such as reasonably to engender the belief that the lands contain mineral in such quantity and of such quality as to render its extraction profitable and justify expenditures to that end. Reference to United States v. Bardsley, 45 IBLA 367 (1980), may prove helpful. [Emphasis in original.]

On November 8, 1982, BLM again rejected Delta's prospecting permit application and in doing so stated that MMS has provided additional information justifying their contention that the lands applied for are plainly such as reasonably to engender the belief that they contain sodium in such quantity and of such quality as to render its extraction profitable and justify expenditures to that end, thereby properly establishing the lands to be within a known leasing area (KLA). BLM notes that MMS' report, dated December 2, 1981, states in part

that the lands applied for contain crystalline halite deposits varying from 9 to 14 feet thick with from zero to 20 feet overburden. In addition, the report specifies that brines therein contain 780-100,000 MG/1 Na, 160-200,000 MG/1 Cl, and 268-365,000 MG/1 TDS. Furthermore the report states that "these data exceed the 1961 and proposed 1972 Sodium Land Classification Standards and justify the classification of the proposed KLA". It further states that, halite has been produced by solar evaporation of natural brines in the Mojave Desert for many years. Markets are located in the Los Angeles - Long Beach and San Diego areas as well as the southern San Joaquin Valley. The presence of comparable operations in the same geographic area suggest that sodium may be extracted at a profit from brines at Cadiz Lake. 2/

The BLM decision concluded that the lands applied for in application CA 6245 have been classified as being within the Cadiz Lake known sodium leasing area, and as such are subject only to leasing through competitive bidding, and a prospecting permit may not be issued for such land.

In the original statement of reasons for appeal, filed in response to BLM's first decision, i.e., that of October 29, 1980, which rejected the

2/ The Dec. 2, 1981, MMS report referred to in the Nov. 8, 1982, BLM decision is accompanied by excerpts of a report upon which the MMS report is apparently based. As to the Cadiz Dry Lake, the area where the lands in question are located, the report provides:

"Introduction

"Cadiz Dry Lake is located 41.8 km (26 mi) southeast of Amboy and 64.4 km (40 mi) east-northeast of Twentynine Palms. The playa is 19.3 km (12 mi) long by 3.2 to 4.8 km (2 to 3 mi) wide and occupies the central depression of a northwest-trending structural trough that includes Bristol Dry Lake to the northwest and Danby Dry Lake to the southeast. The elevation of Cadiz playa is approximately 560 ft.

"Numerous test wells produce calcium chloride from brines on Cadiz playa. Total depth of these test wells generally is less than 61.0 m (200 ft). Bassett and others (1959) completed a 152.4 m (500 ft) test well near the west margin of the playa. A single test well, CAD-1, was completed to 126.5 m (415 ft) in the central area of the playa to (1) locate the eastern limit of a near-surface salt bed, reported by Bassett and others (1959) and penetrated in the saline mineral test wells, and (2) determine the chemical characteristics of saline resources at drill depths greater than previously explored.

"Geology

"The surface of Cadiz playa was mapped by Kupfer and Basset (1962). The central area of the playa is mapped as a mixture of mud, salt, and brine (fig. 23). This area is known valuable for sodium and potassium resources. Minutes to establish a known leasing area on Cadiz playa are scheduled to be completed in FY 79.

prospecting permit application CA 6245, Delta noted that on November 28, 1979, the Riverside, California, BLM District Office had recommended that the permit be issued. The statement then provided information which Delta argued refuted BLM's conclusion in the October 29, 1980, decision that the subject land was "known to contain valuable deposits of sodium." In essence Delta stated that the composition of the brines referred to in the October 29 decision was unknown since the land had never been explored or analyzed and, that Delta by virtue of its operations on adjoining land, had determined that brines occur in lenses and channels which are not continuous. Delta concluded that it was, therefore, pure speculation to conclude that useful brines also existed on the lands sought for the prospecting permit. Delta further stated that the removal of commercially worthless sodium salts was essential to the production of commercially valuable calcium salts; that the brines extracted by Delta, from adjoining land, contained approximately 10 percent calcium salts, the balance of 90 percent being waste sodium salts and a few trace minerals; and that the sodium chloride recovered from the brines produced by Delta on its property was commercially worthless.

Delta further stated that upon the granting of a prospecting permit, it would drill a minimum of two deep wells to ascertain commercial worth, if any, of the underlying brines; if commercially valuable, the value of the remaining large United States holdings on Cadiz Dry Lake would be enhanced; and that discovery and development of large reserves of brine containing significant amounts of calcium chloride could lead to the construction by Delta of a processing plant for the production of flake calcium chloride, a new industry which would contribute to the tax and employment base of the area.

Delta's statement of reasons submitted in response to the second BLM rejection of the prospecting permit application, i.e., the decision of November 8, 1982, is virtually identical to the original statement. It does, however, add that Delta "is conducting additional studies with reference to the revenues and costs of the sodium, and as soon as those reports are available, they will be filed with this appeal." Delta has filed no such reports with the Board.

[1] When deciding whether issuance of a prospecting permit is appropriate, BLM is entitled to rely on the reasoned opinion of MMS as its technical expert. Philip Shaiman, 25 IBLA 177 (1976); James C. Goodwin, 9 IBLA 139, 143-44, 80 I.D. 7, 9-10 (1973); Clear Creek Inn Corp., 7 IBLA 200, 213-14, 79 I.D. 571, 577-78 (1972). A mineral determination made by MMS will not be disturbed in the absence of a clear and definite showing of error. Philip Shaiman, *supra*; Clear Creek Inn Corp., *supra*; see William T. Alexander, 21 IBLA 56, 61 (1975).

We hold that Delta has not made such a clear and definite showing of error to overcome MMS' determination that the lands covered by the permit application in question qualify as a known sodium leasing area. Accordingly, the applications were properly rejected by BLM.

Further, by amendment of its prospecting permit application, Delta named sodium as the mineral for which the permit was sought. However, in its statement of reasons Delta states that sodium chloride now recovered from the brines found on adjoining lands under the control of Delta is commercially worthless to Delta. In fact, Delta's statement indicated that it is principally interested in the discovery, development, and marketing of calcium chloride from the brines. Chlorides, sulphates, carbonates, borates, silicates, and nitrates of sodium are minerals subject to disposition by lease under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 262 (1976). 3/ Calcium compounds, including calcium chloride, are not covered by the Mineral Leasing Act but rather are subject to location under the general mining laws. 30 U.S.C. § 22 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

3/ Pursuant to 30 U.S.C. § 261 (1976), the Secretary of the Interior is authorized "to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, in lands belonging to the United States." Section 262 authorizes the Secretary to lease "lands known to contain valuable deposits of one of the substances enumerated in section 261 of this title." Other leasable minerals are coal, phosphates, oil and gas, sulphur, and potassium. For a distinction as to locatable, leasable, and salable minerals, see the dissenting opinion of Administrative Judge Stuebing in Foote Mineral Co., 34 IBLA 285, 309 (1978), rev'd, Foote Mineral Co. v. United States, 654 F.2d 81 (Ct. Cl. 1981).

